

Neutral Citation No. - 2024:AHC-LKO:38622

Court No. - 27

Case :- APPLICATION U/S 482 No. - 1783 of 2024

Applicant :- Umesh Nandan Lal

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Deptt.
Civil Sectt. Lko. And Another

Counsel for Applicant :- In Person

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed,J.

(C.M.Application No. NIL of 2024)

1. This is an application for correction of the order dated 18.04.2024 passed by this Court.
2. The submission of learned counsel for the applicant is that in the first and second paragraph on the first page and third page of the order dated 18.04.2024, "Umesh Nandan Pal" has wrongly been transcribed in place of "Umesh Nandan Lal", therefore, necessity to move present application arose.
3. On due consideration, application is **allowed**.
4. Accordingly, in the first and second paragraph on the first page and third page of the order dated 18.04.2024, "Umesh Nandan Lal" shall be read in future in place of "Umesh Nandan Pal".
5. The rest of the order dated 15.04.2024 will remain same.

Order Date :- 21.5.2024

Arvind

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Hon'ble Shamim Ahmed,J.

1. Heard Shri Umesh Nandan Lal, the applicant (In person), Shri Ankit Srivastava, learned Counsel for the opposite party No.2, Shri Ashok Kumar Singh, learned A.G.A-I for the State-opposite party No.1 and perused the material placed on record.

2. In compliance of the order dated 18.04.2024, Shri Umesh Nandan Lal, the applicant (In person) and opposite party No.2, namely-Shri Abhay Upadhaya are present before this Court.

3. By means of this petition filed under Section 482 Cr.P.C., the petitioner has prayed the following main reliefs:-

"Wherefore it is most respectfully prayed that this Hon'ble Court may kindly be pleased to setaside the impugned Order dt.7-2-2024 passed in Criminal Revision no.513/2022 by Additional District Judge Special Judge P.C.Act VII Lucknow contained in Annexure No.1. and also setaside the impugned order dt. 08-09-2022 passed in complaint case No. 672/2019 (Abhay Upadhyay Vs Umesh Nandan Lal & another) by Addl. Civil Judge (J.D.) Court No. 35, Lucknow contained in Annexure no. 2. whereby summoned the petitioner under section 323, 504, 506 & 406 Indian Penal Code as well as entire proceedings of complaint case No. 672/2019 pending in the court of A.C.J. (J.D.) Court No. 35 Lucknow."

4. On 18.04.2024 this Court had passed the following order:

"Heard Shri Umesh Nandan Lal, the applicant (In person), Shri Ankit Srivastava, learned Counsel for the opposite party No.2, Shri Ashok Kumar Singh, learned A.G.A-I for the State-opposite party No.1 and perused the material placed on record."

In compliance of the order dated 10.04.2024, Shri Umesh Nandan Lal, the applicant (In person) and opposite party No.2, namely-Shri Abhay Upadhaya are present before this Court.

This Court vide order dated 10.04.2024 passed the following order:-

"Heard Shri Umesh Nandan Lal, the applicant (In person), Shri Ankit Srivastava, learned Counsel for the opposite party No.2, Shri Ashok Kumar Singh, learned A.G.A-I for the State-opposite party No.1 and perused the material placed on record.

In compliance of the order dated 03.04.2024 passed by this Court, the applicant (In person) and the opposite party No.2-Shri Abhay Upadhyaya, are present before this Court and the applicant has brought a demand draft of Rs.25,00,000/- (Rupees Twenty Five Lacs Only) drawn from Central Bank of India, Branch-Gomti Nagar, Lucknow bearing Draft No.209747 dated 09.04.2024.

The said draft in original has been produced before this Court, which was shown to opposite party No.2 and his Counsel Shri Ankit Srivastava, Advocate in the open Court today and they both have signed the photostat copy and matched all the details mentioned in the said draft. Thereafter, the said original draft was returned to the applicant and the copy of the same is taken on record.

The applicant also produced a copy of the compromise deed drafted by him mentioning therein all the cases filed by opposite party No.2 against him and vice versa. The applicant also gave a copy of the same to the opposite party No.2 so that he may also go through the contents of the compromise deed and make all the endeavors to enter into compromise and withdraw all the cases filed against each other.

As agreed between the parties on the last date, the applicant (In person) has shown his bonafide by bringing a draft of Rs.25,00,000/- (Rupees Twenty Five Lacs Only) in original before this Court but the opposite party No.2 has not brought the original agreement to sale so that the same may be handed

over to the applicant. Thus, this Court has no option but to postpone this matter and fix another date in the matter to enable the opposite party No.2 to bring the following documents on the next date of listing:-

- "1. Agreement to Sale in Original dated 15.11.2016.*
- 2. Compromise deed duly signed by both the parties.*
- 3. Original Aadhar Card and PAN Card as well as photostat copy."*

It is further directed that on or before the next date of listing, the opposite party No.2 shall move an application before the Civil Judge (Senior Division) Lucknow, for withdrawal of case bearing Civil Misc. Case No.167 of 2021 filed against the applicant. If any such application is moved by the opposite party No.2, namely-Abhay Upadhyaya, the concerned court is also directed to handover all the original documents to the opposite party No.2 after keeping a photostat copy of the same on record.

Thereafter, Shri Abhay Upadhyaya shall file a copy of the order passed by the trial court on the application so filed by him seeking withdrawal of cases filed by him against the applicant, before this Court on the next date of listing of this case. Both the parties and learned Counsel for the respective parties have no objection if the proceedings of the present case and as well as cases filed by them against each other in the trial court are quashed on the basis of compromise and oral agreements made by them before this Court.

Accordingly, list/put up this case on 18.04.2024 for further orders before this Court. On the next date of listing, the applicant shall bring the original demand draft which was brought by him today also so that the same may be handed over to the opposite party No.2 and the applicant and opposite party No.2, Shri Abhay Upadhyaya shall remain present before this Court in person."

In compliance of the aforesaid order, the opposite party No.2 has brought Agreement to Sale in original and his original Aadhar Card and Pan alongwith a photostat copy. The applicant has brought a demand draft, which was verified and shown to the opposite party No.2 by him on the last

date of listing. Further, a compromise deed duly signed by both the parties is also presented before this Court in original in which terms and conditions of the compromise and all the details of the cases filed against each other by the respective parties are mentioned, which is taken on record.

The opposite party No.2, namely-Abhay Upadhaya has handed over the Original Agreement to Sale dated 15.11.2016 to the applicant, namely-Umesh Nandan Lal in the open Court by taking a due receipt of the same from the applicant. Photostat copy of both the documents are also taken on record. Further, the opposite party No.2, has shown his original Aadhar Card and PAN Card to the applicant and produced a photocopy of the same before this Court, which are also taken on record. The applicant himself verified the Aadhar Card and PAN Card of the opposite party No.2.

The Original Bank Draft of Rs. 25,00,000/- (Rupees Twenty Five Lacs Only) drawn from Central Bank of India, Branch-Gomti Nagar, Lucknow bearing Draft No.209747 dated 09.04.2024, produced before this Court by the applicant, namely-Umesh Nandan Lal is handed over to the opposite party No.2, namely-Abhay Upadhaya after taking his receiving on a photostat copy of the same, the said draft was seen and verified by the opposite party No.2 on 10.04.2024 i.e. on the last date of listing. The photostat copy of original draft duly received by the opposite party No.2 is also taken on record.

The applicant (In person) as well as learned Counsel for the opposite party No.2 submits that now the dispute between the parties has been settled and the proceedings of the present case may be quashed.

In view of the above, as the parties have now amicably settled their dispute before this Court on the basis of compromise deed dated 18.04.2024 which was signed by both the parties before this Court today only, nothing remains to be adjudicated in the present case, which pertains to criminal offences but so far as the cases filed by both the parties in the civil courts which are of civil nature are concerned, which are clearly mentioned in the

said compromise deed, this Court deems it appropriate to give them a chance to withdraw all the cases filed against each other, which are pending in the civil courts before quashing the proceedings of the present case.

Accordingly, list/put up this case on 02.05.2024 for further orders before this Court. It is hereby directed that both the parties shall move an appropriate applications before the concerned civil courts to withdraw all the cases filed against each other within 20 days' from today and the concerned civil court will pass an appropriate order in accordance with law within one week's time thereafter.

On the next date, both the parties shall again appear in person before this Court.

Interim order, already granted, is extended till the next date of listing. "

5. In compliance of order dated 18.04.2024 the applicant has filed supplementary affidavit before this court. The same is taken on record. The paragraph No. 5 and 6 of the supplementary affidavit is being reproduced as under:

"5. The being worried about the compliance of Hon'ble High Court Order dated 18.04.2024 the deponent again filed the Transfer Application No. 447/2024 before the Court of District Session and Judge Lucknow for the transfer of the said R.S. No. 688/2019 from the Court of A.C.J. (S.D.) Court No.44, Lucknow which was transferred by the District Judge order dated 13.05.2024 to the Court of Civil Judge (S.D.) Lucknow and this Court after intimating the defendant fixed 17.05.2024 for hearing and disposal and disposal of withdrawal applications C-38 and A-41 and permitted the plaintiffs of R.S. No. 688/2019 to withdraw the regular suit filed against the defendant arrayed as opposite party No.2 is Application o. 1783 of 2024 filed under Section 482 Cr.P.C.. The certified copy of the WITHDRAWAL ORDER DATED 17.05.2024 is annexed as Annexure No. 1 to this Supplementary affidavit.

6. That datewise certified copies of Transfer Orders regarding transfer of R.S. No. 688/2019 from the Court of A.C.J. (S.D.) Court No.22 Lucknow to the Court of Civil Judge (S.D.) Lucknow are annexed as Annexure no. 2, 3 and 4 to this Supplementary affidavit."

6. Learned counsel for the opposite party No.2 has also filed affidavit in compliance of order dated 18.04.2024. The paragraph No. 2 is being reproduced as under:

"That in furtherance and in compliance of the order dated 18.04.2024 passed by the Hon'ble Court in the instant matter, the petitioner has moved an application for withdrawal of the suit filed by him. The said application for withdrawal of the suit filed by him. The said application was moved in Misc. Case No. 167/2021 (Abhay Upadhyaya Vs. Umesh Nandan Lal and others) and was indexed as A-10. The said application subsequently was allowed and the civil suit so instituted by the deponent was permitted to be withdrawn vide order dated 24.04.2024. The copy whereof is annexed herewith as Annexure A-1."

7. Learned counsel for the opposite party no.2 submits that his client is not interested to pursue the matter any further and he has no objection if the proceedings of the present case pending before the learned trial court may be quashed.

8. Learned A.G.A.-I for the State has also submitted that since the opposite party no.2 is not interested to pursue the matter any further, therefore, no useful purpose would be served if the proceedings of the aforesaid case go on further.

9. After considering the entire facts and circumstances of the case as well as after considering the arguments as advanced by learned counsel for the parties, this Court finds it appropriate to discuss some judgments which have been pronounced by Hon'ble the Supreme Court of India.

10. Hon'ble the Supreme Court of India in the case of **Lalankumar Singh and Others vs. State of Maharashtra** reported in **2022 SCC Online SC 1383** has specifically held in paragraph No.38 that the order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. Paragraph No.38 of **Lalankumar Singh and Others (supra)** is being quoted hereunder:-

"38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation, which reads thus:

"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient ground for proceeding" appearing in

Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

11. Further, Hon'ble the Supreme Court of India has provided guidelines in case of State of **Haryana Vs. Bhajan Lal** reported in **1992 Supp (1) SCC 335** for the exercise of power under Section 482 Cr.P.C. which is extraordinary power and used separately in following conditions:-

"102.(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused."

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

12. Further the Apex Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:- (i) **R.P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866**, (ii) **State of Bihar Vs. P.P. Sharma, 1992 SCC (CrL.)192**, (iii) **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283** and (iv) **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, AIR 2021 SC 1918**.

13. In **S.W. Palankattkar & others Vs. State of Bihar, 2002 (44) ACC 168**, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

14. In **M/s Pepsi Food Ltd. and another Vs. Special Judicial Magistrate and others: 1998 (5) SCC 749**, Hon'ble Apex Court has observed:

"Summoning of an accused in a criminal case, is a serious matter. Criminal law can not be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning the accused. Magistrate had to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

15. In the instant case, there is nothing in the summoning order to show that the Magistrate concerned perused the material available on record before passing summoning order. Hence the summoning order is bad in the eyes of law and resultantly it is not sustainable.

16. Thus, in view of the law laid down by the Hon'ble Apex Court and the facts and circumstances, as narrated above and also with the assistance of the aforesaid guidelines and keeping in view the nature and gravity and the severity of the offence which more particularly is a private dispute and differences, it deems proper and meet to the ends of justice that the proceeding of the aforementioned case be quashed

17. Accordingly, the present 482 Cr.P.C. application stands **allowed**. Keeping in view the law laid down by the Hon'ble Apex Court in the above referred judgment and in view of the statement made by the applicant as well as opposite party no.2 and also considering the supplementary affidavit filed by the applicant and affidavit filed by the opposite party No.2, the impugned Order dated 07-2-2024 passed in Criminal Revision no.513/2022 by Additional District Judge Special Judge P.C.Act VII Lucknow and the impugned order dt. 08-09-2022 passed in complaint case No. 672/2019 (Abhay Upadhyay Vs Umesh

Nandan Lal & another) by Addl. Civil Judge (J.D.) Court No. 35, Lucknow as well as entire proceedings of complaint case No. 672/2019 pending in the court of A.C.J. (J.D.) Court No. 35 Lucknow are hereby **quashed** so far as it relates to the instant applicant.

18. Office is directed to transmit a copy of this order to the learned trial court concerned immediately.

Order Date :- 21.5.2024

Arvind